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# HOUSE BILL No. 1400

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-7-4.

**Synopsis:** School impact fees. Authorizes a school corporation to adopt a school impact fee resolution that imposes an impact fee on new residential development. Provides that a school corporation may not adopt an impact fee unless the school corporation's capital projects plan includes the following components: (1) Projected school capacity needs for the current year and for not less than the succeeding four year period. (2) Estimated capital costs for the additional capacity needs. (3) Identification and general description of each project. (4) The estimated total cost of each project. (5) Identification of all sources of funds expected to be used for each project. (6) The planning, development, and construction schedule of each project. Provides that a school impact fee is equal to the proportionate share of costs incurred or to be incurred by a school corporation to provide school infrastructure that is required by, necessitated by, or needed to serve the new residential development, minus the sum of any nonlocal revenues, taxes, and charges that the fee payer and future owners of the development will pay for use of the school infrastructure.

**Effective:** July 1, 2009.

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## Reske

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January 13, 2009, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1400

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 36-7-4-1305 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1305. (a) As used in  
3 this series, "impact fee" means a monetary charge imposed on new  
4 development by a unit to defray or mitigate the capital costs of  
5 infrastructure that is required by, necessitated by, or needed to serve  
6 the new development.  
7 (b) As used in this section, "capital costs" means the costs incurred  
8 to provide additional infrastructure to serve new development,  
9 including the following:  
10 (1) Directly related costs of construction or expansion of  
11 infrastructure, **including (in the case of an impact fee imposed**  
12 **by a school corporation) school buildings and facilities**, that is  
13 **are** necessary to serve the new development, including reasonable  
14 design, survey, engineering, environmental, and other  
15 professional fees that are directly related to the construction or  
16 expansion.  
17 (2) Directly related land acquisition costs, including costs



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incurred for the following:

- (A) Purchases of interests in land.
- (B) Court awards or settlements.
- (C) Reasonable appraisal, relocation service, negotiation service, title insurance, expert witness, attorney, and other professional fees that are directly related to the land acquisition.
- (3) Directly related debt service, subject to section 1330 of this chapter.
- (4) Directly related expenses incurred in preparing or updating the comprehensive plan, ~~or the zone improvement plan, or a school capital projects plan~~, including all administrative, consulting, attorney, and other professional fees, as limited by section 1330 of this chapter.

SECTION 2. IC 36-7-4-1308 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1308. As used in this series, "infrastructure" means the capital improvements that:

- (1) comprise:
  - (A) a sanitary sewer system or wastewater treatment facility;
  - (B) a park or recreational facility;
  - (C) a road or bridge;
  - (D) a drainage or flood control facility; ~~or~~
  - (E) a water treatment, water storage, or water distribution facility; **or**
  - (F) school buildings and facilities;**
- (2) are:
  - (A) owned solely for a public purpose by:
    - (i) a unit; ~~or~~
    - (ii) a corporation created by a unit; ~~or~~
    - (iii) a school corporation; or**
    - (iv) a school building corporation or school leasing corporation;**
  - (B) leased by a unit solely for a public purpose; ~~and or~~
  - (C) leased by a school corporation solely for a public purpose; and**
- (3) are included in:
  - (A) the zone improvement plan by the unit; or**
  - (B) the zone improvement plan incorporated in a school capital projects plan under section 1313.6 of this chapter;**

of the impact zone in which the capital improvements are located. The term includes site improvements or interests in real property needed for a facility listed in subdivision (1).

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SECTION 3. IC 36-7-4-1309 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1309. As used in this series, "infrastructure type" means any of the following types of infrastructure covered by an impact fee ordinance **or a school impact fee resolution:**

(1) Sewer, which includes sanitary sewerage and wastewater treatment facilities.

(2) Recreation, which includes parks and other recreational facilities.

(3) Road, which includes public ways and bridges.

(4) Drainage, which includes drains and flood control facilities.

(5) Water, which includes water treatment, water storage, and water distribution facilities.

**(6) School, which includes school buildings and facilities.**

SECTION 4. IC 36-7-4-1310.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1310.3. (a) As used in this series, "residential development" means the construction of any building for use and occupancy as a dwelling unit.**

**(b) The term does not include hotels, motels, recreational vehicle parks, and similar developments intended solely for temporary or seasonal occupancy.**

SECTION 5. IC 36-7-4-1310.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1310.5. As used in this series, "school corporation" has the meaning set forth in IC 20-18-2-16.**

SECTION 6. IC 36-7-4-1310.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1310.7. As used in this series, "school impact fee resolution" means a resolution adopted under section 1311.5 of this chapter.**

SECTION 7. IC 36-7-4-1310.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1310.9. As used in this series, "unit" includes a school corporation.**

SECTION 8. IC 36-7-4-1311 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1311. (a) **This section does not apply to a school corporation.** The legislative body of a unit may adopt an ordinance imposing an impact fee on new development in the geographic area over which the unit exercises planning and zoning jurisdiction. The ordinance must aggregate the portions of the impact fee attributable to the infrastructure types covered by the

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ordinance so that a single and unified impact fee is imposed on each new development.

(b) If the legislative body of a unit has planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance, an ordinance adopted under this section shall be adopted in the same manner that zoning ordinances are adopted under the 600 SERIES of this chapter.

(c) If the legislative body of a unit does not have planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance but does have jurisdiction over one (1) or more infrastructure types in the area, the legislative body shall establish the portion of the impact fee schedule or formula for the infrastructure types over which the legislative body has jurisdiction. The legislative body of the unit having planning and zoning jurisdiction shall adopt an impact fee ordinance containing that portion of the impact fee schedule or formula if:

- (1) a public hearing has been held before the legislative body having planning and zoning jurisdiction; and
- (2) each plan commission that has planning jurisdiction over any part of the geographic area in which the impact fee is to be imposed has approved the proposed impact fee ordinance by resolution.

(d) An ordinance adopted under this section is the exclusive means for a unit to impose an impact fee. An impact fee imposed on new development to pay for infrastructure may not be collected after January 1, 1992, unless the impact fee is imposed under an impact fee ordinance adopted under this chapter.

(e) Notwithstanding any other provision of this chapter, the following charges are not impact fees and may continue to be imposed by units:

- (1) Fees, charges, or assessments imposed for infrastructure services under statutes in existence on January 1, 1991, if:
  - (A) the fee, charge, or assessment is imposed upon all users whether they are new users or users requiring additional capacity or services;
  - (B) the fee, charge, or assessment is not used to fund construction of new infrastructure unless the new infrastructure is of the same type for which the fee, charge, or assessment is imposed and will serve the payer; and
  - (C) the fee, charge, or assessment constitutes a reasonable charge for the services provided in accordance with IC 36-1-3-8(6) or other governing statutes requiring that any

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fees, charges, or assessments bear a reasonable relationship to the infrastructure provided.

(2) Fees, charges, and assessments agreed upon under a contractual agreement entered into before April 1, 1991, or fees, charges, and assessments agreed upon under a contractual agreement, if the fees, charges, and assessments are treated as impact deductions under section 1321(d) of this chapter if an impact fee ordinance is in effect.

SECTION 9. IC 36-7-4-1311.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1311.5. (a) This section applies to the adoption of a school impact fee resolution and the imposition of an impact fee by a school corporation.**

**(b) A plan commission shall notify each school corporation located in whole or in part within the jurisdiction of the plan commission of any new residential development that has been approved for construction within the jurisdiction of the plan commission.**

**(c) A school corporation may adopt a school impact fee resolution that imposes an impact fee on new residential development.**

**(d) A school impact fee resolution adopted under this section must meet the requirements of sections 1313.6, 1314(c), 1320, 1321, 1322, 1334, and 1337 of this chapter.**

**(e) A school impact fee resolution is effective upon its approval by the governing body of the school corporation.**

**(f) A school corporation is not required to meet the requirements of section 1312 of this chapter before adopting a school impact fee resolution under this section to impose an impact fee.**

**(g) The boundaries of the impact zone are coterminous with the boundaries of the school corporation.**

**(h) A school corporation may not adopt a school impact fee resolution establishing an impact fee unless the school corporation has prepared or substantially updated the school corporation's capital projects plan during the immediately preceding one (1) year period.**

**(i) A school corporation may not amend a school impact fee resolution establishing an impact fee if the amendment makes a significant change in an impact fee schedule or formula unless a new or substantially updated capital improvement plan has been approved by the school corporation within the immediately**

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preceding one (1) year period.

(j) The school corporation unit shall assess and administer the collection of the impact fee imposed by the school corporation under this series.

(k) A fee payer of an impact fee adopted by a school corporation may petition the school corporation's impact fee review board under section 1336 of this chapter. A person may file an action under section 1339.5 of this chapter regarding an impact fee established by a school corporation.

SECTION 10. IC 36-7-4-1313 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1313. This series does not prohibit a unit from doing any of the following:

(1) Imposing a charge to pay the administrative, plan review, or inspection costs associated with a permit for development.

(2) Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to a unit or to an infrastructure agency. However, if the unit adopts or has already adopted an impact fee ordinance under section 1311 of this chapter or a school impact fee resolution under section 1311.5 of this chapter the following apply:

(A) The person dedicating, contributing, or providing an improvement under this subsection is entitled to a credit for the improvement under section 1335 of this chapter.

(B) The cost of complying with the condition or requirement imposed by the unit under this subdivision may not exceed the impact fee that could have been imposed by the unit under section 1321 of this chapter for the same infrastructure.

(3) Imposing new permit fees, charges, or assessments or amending existing permit fees, charges, or assessments. However, the permit fees, charges, or assessments must meet the requirements of section 1311(e)(1)(A), 1311(e)(1)(B), and 1311(e)(1)(C) of this chapter, **in the case of a unit that is not a school corporation.**

SECTION 11. IC 36-7-4-1313.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1313.6. (a) As used in this section, "capacity" means the number of students the school corporation's facilities can accommodate as determined by the school corporation.**

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(b) A school corporation may not adopt an impact fee under section 1311.5 of this chapter unless the school corporation's capital projects plan includes the following components of a zone improvement plan:

- (1) Projected school capacity needs for the current year and for not less than the succeeding four (4) year period.
- (2) Estimated capital costs for the additional capacity needs.
- (3) Identification and general description of each project.
- (4) The estimated total cost of each project.
- (5) Identification of all sources of funds expected to be used for each project.
- (6) The planning, development, and construction schedule of each project.

SECTION 12. IC 36-7-4-1314 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1314. (a) Except as provided in subsection (b), an impact fee ordinance must apply to any development:

- (1) that is in an impact zone; and
- (2) for which a unit may require a structural building permit.

(b) An impact fee ordinance may not apply to an improvement that does not create a need for additional infrastructure, including the erection of a sign, the construction of a fence, or the interior renovation of a building not resulting in a change in use.

**(c) A school impact fee resolution must apply to any new residential development:**

- (1) that is in an impact zone; and**
- (2) for which a unit may require a structural building permit.**

SECTION 13. IC 36-7-4-1315 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1315. (a) An impact fee ordinance must establish an impact zone, or a set of impact zones, for each infrastructure type covered by the ordinance. An impact zone established for a particular infrastructure type is not required to be congruent with an impact zone established for a different infrastructure type. **In the case of a school corporation, the boundaries of the impact zone are coterminous with the boundaries of the school corporation. A school impact fee resolution may cover only school infrastructure.**

(b) An impact zone may not extend beyond the jurisdictional boundary of an infrastructure agency responsible for the infrastructure type for which the impact zone was established, unless an agreement under IC 36-1-7 is entered into by the infrastructure agencies. **An impact zone established in a school impact fee resolution may not**

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1 extend beyond the jurisdictional boundary of the school  
2 corporation that adopts the school impact fee resolution.

3 (c) **This subsection does not apply to fees collected under a**  
4 **school impact fee resolution.** If an impact zone, or a set of impact  
5 zones, includes a geographic area containing territory from more than  
6 one (1) planning and zoning jurisdiction, the applicable legislative  
7 bodies and infrastructure agencies shall enter into an agreement under  
8 IC 36-1-7 concerning the collection, division, and distribution of the  
9 fees collected under the impact fee ordinance.

10 SECTION 14. IC 36-7-4-1316 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1316. **(a) This section**  
12 **does not apply to an impact zone designated under a school impact**  
13 **fee resolution.**

14 **(b)** A unit must include in an impact zone designated under section  
15 1315 of this chapter the geographical area necessary to ensure that:

- 16 (1) there is a functional relationship between the components of  
17 the infrastructure type in the impact zone;
- 18 (2) the infrastructure type provides a reasonably uniform benefit  
19 throughout the impact zone; and
- 20 (3) all areas included in the impact zone are contiguous.

21 SECTION 15. IC 36-7-4-1317 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1317. **This section**  
23 **does not apply to a school corporation that adopts a school impact**  
24 **fee resolution.** A unit must identify in the unit's impact fee ordinance  
25 the infrastructure agency that is responsible for acquiring, constructing,  
26 or providing each infrastructure type included in the impact fee  
27 ordinance.

28 SECTION 16. IC 36-7-4-1318 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1318. **(a) This section**  
30 **does not apply to a school impact fee resolution or a school impact**  
31 **fee.**

32 ~~(a)~~ **(b)** A unit may not adopt an impact fee ordinance under section  
33 1311 of this chapter unless the unit has prepared or substantially  
34 updated a zone improvement plan for each impact zone during the  
35 immediately preceding one (1) year period. A single zone improvement  
36 plan may be used for two (2) or more infrastructure types if the impact  
37 zones for the infrastructure types are congruent.

38 ~~(b)~~ **(c)** Each zone improvement plan must contain the following  
39 information:

- 40 (1) A description of the nature and location of existing  
41 infrastructure in the impact zone.
- 42 (2) A determination of the current level of service.

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(3) Establishment of a community level of service. A unit may provide that the unit's current level of service is the unit's community level of service in the zone improvement plan.

(4) An estimate of the nature and location of development that is expected to occur in the impact zone during the following ten (10) year period.

(5) An estimate of the nature, location, and cost of infrastructure that is necessary to provide the community level of service for the development described in subdivision (4). The plan must indicate the proposed timing and sequencing of infrastructure installation.

(6) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

~~(c)~~ (d) If a zone improvement plan provides for raising the current level of service to a higher community level of service, the plan must:

(1) provide for completion of the infrastructure that is necessary to raise the current level of service to the community level of service within the following ten (10) year period;

(2) indicate the nature, location, and cost of infrastructure that is necessary to raise the current level of service to the community level of service; and

(3) identify the revenue sources and estimate the amount of the revenue sources that the unit intends to use to raise the current level of service to the community level of service for existing development. Revenue sources include, without limitation, any increase in revenues available from one (1) or more of the following:

(A) Adopting or increasing the following:

(i) The county adjusted gross income tax.

(ii) The county option income tax.

(iii) The county economic development income tax.

(iv) The annual license excise surtax.

(v) The wheel tax.

(B) Imposing the property tax rate per one hundred dollars (\$100) of assessed valuation that the unit may impose to create a cumulative capital improvement fund under IC 36-9-14.5 or IC 36-9-15.5.

(C) Transferring and reserving for infrastructure purposes other general revenues that are currently not being used to pay for capital costs of infrastructure.

(D) Dedicating and reserving for infrastructure purposes any newly available revenues, whether from federal or state revenue sharing programs or from the adoption of newly

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authorized taxes.

~~(d)~~ (e) A unit must consult with a qualified engineer licensed to perform engineering services in Indiana when the unit is preparing the portions of the zone improvement plan described in subsections ~~(b)(1)~~, ~~(b)(2)~~, ~~(b)(5)~~, and ~~(c)(2)~~; **(c)(1), (c)(2), (c)(5), and (d)(2).**

~~(e)~~ (f) A zone improvement plan and amendments and modifications to the zone improvement plan become effective after adoption as part of the comprehensive plan under the 500 SERIES of this chapter or adoption as part of the capital improvements program under section 503(5) of this chapter. If the unit establishing the impact fee schedule or formula and establishing the zone improvement plan is different from the unit having planning and zoning jurisdiction, the unit having planning and zoning jurisdiction shall incorporate the zone improvement plan as part of the unit's comprehensive plan and capital improvement plan.

~~(f)~~ (g) If a unit's zone improvement plan identifies revenue sources for raising the current level of service to the community level of service, impact fees may not be assessed or collected by the unit unless:

(1) before the effective date of the impact fee ordinance the unit has available or has adopted the revenue sources that the zone improvement plan specifies will be in effect before the impact fee ordinance becomes effective; and

(2) after the effective date of the impact fee ordinance the unit continues to provide adequate funds to defray the cost of raising the current level of service to the community level of service, using revenue sources specified in the zone improvement plan or revenue sources other than impact fees.

SECTION 17. IC 36-7-4-1319 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1319. **(a) This section does not apply to a school impact fee resolution or a school impact fee.**

~~(a)~~ (b) A unit shall amend a zone improvement plan to make adjustments in the nature, location, and cost of infrastructure and the timing or sequencing of infrastructure installations to respond to the nature and location of development occurring in the impact zone. Appropriate planning and analysis shall be carried out before an amendment is made to a zone improvement plan.

~~(b)~~ (c) A unit may not amend an impact fee ordinance if the amendment makes a significant change in an impact fee schedule or formula or if the amendment designates an impact zone or alters the boundary of a zone, unless a new or substantially updated zone improvement plan has been approved within the immediately preceding

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one (1) year period.

SECTION 18. IC 36-7-4-1320 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1320. (a) An impact fee ordinance **or a school impact fee resolution** must include:

(1) a schedule prescribing for each impact zone the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance **or resolution**; or

(2) a formula for each impact zone by which the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance **or resolution** may be derived.

(b) A schedule or formula included in an impact fee ordinance **or a school impact fee resolution** must provide an objective and uniform standard for calculating impact fees that allows fee payers to accurately predict the impact fees that will be imposed on new development.

SECTION 19. IC 36-7-4-1321 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1321. (a) An impact fee schedule or formula described in section 1320 of this chapter shall be prepared so that the impact fee resulting from the application of the schedule or formula to a development meets the requirements of this section. However, this section does not require that a particular methodology be used in preparing the schedule or formula.

(b) As used in this section, "impact costs" means a reasonable estimate, made at the time the impact fee is assessed, of **the following**:

**(1) In the case of an impact fee other than a school impact fee,** the proportionate share of the costs incurred or to be incurred by the unit in providing infrastructure of the applicable type in the impact zone that are necessary to provide the community level of service for the development. The amount of impact costs may not include the costs of infrastructure of the applicable type needed to raise the current level of service in the impact zone to the community level of service in the impact zone for development that is existing at the time the impact fee is assessed.

**(2) In the case of a school impact fee, the proportionate share of costs incurred or to be incurred by a school corporation that imposes an impact fee under section 1311.5 of this chapter to provide school infrastructure in the impact zone that is required by, necessitated by, or needed to serve the new development.**

(c) As used in this section, "nonlocal revenue" means a reasonable estimate, made at the time the impact fee is assessed, of revenue that:

(1) will be received from any source (including but not limited to state or federal grants) other than a local government source; and

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(2) is to be used within the impact zone to defray the capital costs of providing infrastructure of the applicable type.

(d) As used in this section, "impact deductions" means a reasonable estimate, made at the time the impact fee is assessed, of the amounts from the following sources that will be paid during the ten (10) year period after assessment of the impact fee to defray the capital costs of providing infrastructure of the applicable types to serve a development:

(1) Taxes levied by the unit or on behalf of the unit by an applicable infrastructure agency **or school corporation** that the fee payer and future owners of the development will pay for use within the geographic area of the unit.

(2) Charges and fees, other than fees paid by the fee payer under this chapter, that are imposed by any of the following for use within the geographic area of the unit:

(A) An applicable infrastructure agency.

(B) A governmental entity.

(C) A not-for-profit corporation created for governmental purposes.

Charges and fees covered by this subdivision include tap and availability charges paid for extension of services or the provision of infrastructure to the development.

(e) An impact fee on a development may not exceed:

(1) impact costs; minus

(2) the sum of nonlocal revenues and impact deductions.

SECTION 20. IC 36-7-4-1322 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1322. (a) Except as provided in subsection (b), an impact fee ordinance **or a school impact fee resolution** must require that, if the fee payer requests, an impact fee on a development must be assessed not later than thirty (30) days after the earlier of:

(1) the date the fee payer obtains an improvement location permit for the development; or

(2) the date that the fee payer voluntarily submits to the unit a development plan for the development and evidence that the property is properly zoned for the proposed development. The plan shall be in the form prescribed by the unit's zoning ordinance **or, in the case of a school corporation, the school corporation's school impact fee resolution** and shall contain reasonably sufficient detail for the unit to calculate the impact fee.

(b) An impact fee ordinance **or a school impact fee resolution** may provide that if a proposed development is of a magnitude that will require revision of the zone improvement plan in order to appropriately

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1 serve the new development, the unit shall revise the unit's zone  
 2 improvement plan and, **if necessary, a unit that is a school**  
 3 **corporation shall revise the school corporation's capital projects**  
 4 **plan. A unit** shall assess an impact fee on a development not later than  
 5 one hundred eighty (180) days after the earlier of the following:

6 (1) The date on which the fee payer obtains an improvement  
 7 location permit for the development.

8 (2) The date on which the fee payer submits to the unit a  
 9 development plan for a development and evidence that the  
 10 property is properly zoned for the proposed development. The  
 11 development plan must be in the form prescribed by the unit's  
 12 zoning ordinance **or, in the case of a school corporation, the**  
 13 **school corporation's school impact fee resolution** and must  
 14 contain reasonably sufficient detail for the unit to calculate the  
 15 impact fee.

16 (c) An impact fee assessed under subsections (a) or (b) may be  
 17 increased only if the structural building permit has not been issued for  
 18 the development and the requirements of subsection (d) are satisfied.  
 19 In the case of a phased development, only a portion of an impact fee  
 20 assessed under subsection (a) or (b) that is attributable to the portion  
 21 of the development for which a permit has not been issued may be  
 22 increased if the requirements of subsection (d) are satisfied.

23 (d) Unless the improvement location permit or development plan  
 24 originally submitted for the development is changed so that the amount  
 25 of impact on infrastructure the development creates in the impact zone  
 26 is significantly increased, an impact fee assessed under:

27 (1) subsection (a)(1) or (b)(1) may not be increased for the period  
 28 of the improvement location permit's validity; and

29 (2) subsection (a)(2) or (b)(2) may not be increased for three (3)  
 30 years.

31 (e) An impact fee assessed under subsection (a) or (b) shall be  
 32 decreased if the improvement location permit or development plan  
 33 originally submitted for the development is changed so that the amount  
 34 of impact on infrastructure that the development creates in the impact  
 35 zone is significantly decreased. If a change occurs in the permit or plan  
 36 that results in a decrease in the amount of the impact fee after the fee  
 37 has been paid, the unit that collected the fee shall immediately refund  
 38 the amount of the overpayment to the fee payer.

39 (f) If the unit fails to assess an impact fee within the period required  
 40 by subsection (a) or (b), the unit may not assess an impact fee on the  
 41 development unless the development plan originally submitted for the  
 42 development is materially and substantially changed.

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(g) Notwithstanding other provisions in this chapter, a unit may not assess an impact fee against a development if:

(1) an improvement location permit has been issued for all or a part of a development before adoption of an impact fee ordinance that is in compliance with this chapter; and

(2) the development satisfies all of the following criteria:

(A) The development is zoned for commercial or industrial use before January 1, 1991.

(B) The development will consist primarily of new buildings or structures. As used in this clause, the term "new buildings or structures" does not include additions or expansions of existing buildings or structures.

(C) The parts of the development for which a structural building permit has not been issued are owned or controlled by the person that owned or controlled the development on January 1, 1991.

(D) A structural building permit is issued for the development not more than four (4) years after the effective date of the impact fee ordinance.

(E) The development is part of a common scheme of development that:

(i) involves land that is contiguous;

(ii) involves a plan for development that includes a survey of the land, engineering drawings, and a site plan showing the anticipated size, location, and use of buildings and the anticipated location of streets, sewers, and drainage;

(iii) if plan approval is required, resulted in an application being filed with an appropriate office, commission, or official of the unit before January 1, 1991, that resulted or may result in approval of any phase of the development plan referred to in item (ii);

(iv) has been diligently pursued since January 1, 1991;

(v) resulted before January 1, 1991, in a substantial investment in creating, publicizing, or implementing the common scheme of development; and

(vi) involved the expenditure of significant funds before January 1, 1991, for the provision of improvements, such as roads, sewers, water treatment facilities, water storage facilities, water distribution facilities, drainage systems, or parks, that are on public lands or are available for other development in the area.

(h) Notwithstanding any other provision of this chapter, this chapter

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1 does not impair the validity of any contract between a unit and a fee  
2 payer that was:

- 3 (1) entered into before January 1, 1991; and
- 4 (2) executed in consideration of zoning amendments or  
5 annexations requested by the fee payer.

6 SECTION 21. IC 36-7-4-1323 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1323. (a) Except as  
8 provided in section 1324 of this chapter, an impact fee assessed in  
9 compliance with section 1322 of this chapter is due and payable on the  
10 date of issuance of the structural building permit for the new  
11 development on which the impact fee is imposed.

12 (b) For a phased development, an impact fee shall be prorated for  
13 purposes of payment according to the impact of the parcel for which a  
14 structural building permit is issued in relation to the total impact of the  
15 development. In accordance with section 1324 of this chapter, only the  
16 prorated portion of the assessed impact fee is due and payable on the  
17 issuance of the permit.

18 (c) If an impact fee ordinance **or a school impact fee resolution** is  
19 repealed, lapses, or becomes ineffective after the assessment of an  
20 impact fee on a development but before the issuance of the structural  
21 building permit for part or all of the development:

- 22 (1) any part of the impact fee attributable to the part of the  
23 development for which a structural building permit has not been  
24 issued is void and is not due and payable, in the case of a phased  
25 development; and
- 26 (2) the entire impact fee is void and is not due and payable, in the  
27 case of a development other than a phased development.

28 SECTION 22. IC 36-7-4-1324 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1324. (a) An impact fee  
30 ordinance **or a school impact fee resolution** must include an  
31 installment payment plan. The installment payment plan must at least  
32 offer a fee payer the option of paying part of an impact fee in equal  
33 installment payments if the impact fee is greater than five thousand  
34 dollars (\$5,000). In an installment plan under this section:

- 35 (1) a maximum of five thousand dollars (\$5,000) or five percent  
36 (5%) of the impact fee, whichever is greater, may become payable  
37 on the date the structural building permit is issued for the  
38 development on which the fee is imposed;
- 39 (2) the first installment may not become due and payable less than  
40 one (1) year after the date the structural building permit is issued  
41 for the development on which the fee is imposed; and
- 42 (3) the last installment may not be due and payable less than two

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(2) years after the date the structural building permit is issued for the development on which the fee is imposed.

(b) An impact fee ordinance **or a school impact fee resolution** may require an impact fee of five thousand dollars (\$5,000) or less to be paid in full on the date the structural building permit is issued for the development on which the impact fee is imposed.

(c) An impact fee ordinance **or a school impact fee resolution** may provide that a reasonable rate of interest, not to exceed the prejudgment rate of interest in effect at the time the interest accrues, may be charged if the fee payer elects to pay in installments. If interest is charged, the ordinance **or resolution** must provide that interest accrues only on the portion of the impact fee that is outstanding and does not begin to accrue until the date the structural building permit is issued for the development or the part of the development on which the impact fee is imposed.

(d) An impact fee ordinance **or a school impact fee resolution** may provide that if all or part of an installment is not paid when due and payable, the amount of the installment shall be increased on the first day after the installment is due and payable by a penalty amount equal to ten percent (10%) of the installment amount that is overdue. If interest is charged under subsection (c), the interest shall be charged on the penalty amount.

SECTION 23. IC 36-7-4-1325 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1325. (a) A unit may use any legal remedy to collect an impact fee imposed by the unit. A unit must bring an action to collect an impact fee and all penalties, costs, and collection expenses associated with a fee not later than ten (10) years after the fee or the prorated portion of the impact fee first becomes due and payable.

(b) On the date a structural building permit is issued for the development of property on which the impact fee is assessed, the unit acquires a lien on the real property for which the permit is issued. For a phased development, the amount of the lien may not exceed the prorated portion of the impact fee due and payable in one (1) or more installments at the time the structural building permit is issued.

(c) A lien acquired by a unit under this section is not affected by a sale or transfer of the real property subject to the lien, including the sale, exchange, or lease of the real property under IC 36-1-11.

(d) A lien acquired by a unit under this section continues for ten (10) years after the impact fee or the prorated portion of the impact fee becomes due and payable. However, if an action to enforce the lien is filed within the ten (10) year period, the lien continues until the

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1 termination of the proceeding.

2 (e) A holder of a lien of record on any real property on which an  
3 impact fee is delinquent may pay the delinquent impact fee and any  
4 penalties and costs. The amount paid by the lien holder is an additional  
5 lien on the real property in favor of the lien holder and is collectible in  
6 the same manner as the original lien.

7 (f) If a person pays an impact fee assessed against any real property,  
8 the person is entitled to a receipt for the payment that is:

9 (1) on a form prescribed by the impact fee ordinance **or school**  
10 **impact fee resolution;** and

11 (2) issued by a person designated in the impact fee ordinance **or**  
12 **school impact fee resolution.**

13 SECTION 24. IC 36-7-4-1326 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1326. **(a) This section**  
15 **does not apply to a school impact fee resolution.**

16 ~~(a)~~ **(b)** An impact fee ordinance may provide for a reduction in an  
17 impact fee for housing development that provides sale or rental  
18 housing, or both, at a price that is affordable to an individual or a  
19 family earning less than eighty percent (80%) of the median income for  
20 the county in which the housing development is located. If the housing  
21 development comprises more than one (1) residential unit, the impact  
22 fee reduction shall apply only to the residential units that are affordable  
23 to an individual or a family earning less than eighty percent (80%) of  
24 the median income of the county.

25 ~~(b)~~ **(c)** If the impact fee ordinance provides for a reduction in an  
26 impact fee under subsection ~~(a)~~; **(b)**, the ordinance must:

27 (1) contain a schedule or formula that sets forth the amount of the  
28 fee reduction for various types of housing development specified  
29 in subsection ~~(a)~~; **(b)**;

30 (2) require that, as a condition of receiving the fee reduction, the  
31 owner execute an agreement that:

32 (A) is binding for a period of at least five (5) years on the  
33 owner and subsequent owners; and

34 (B) limits the tenancy of residential units receiving the fee  
35 reduction to individuals or families who at the time the  
36 tenancy is initiated are earning less than eighty percent (80%)  
37 of the median income of the county;

38 (3) contain standards to be used in determining if a particular  
39 housing development specified in subsection ~~(a)~~ **(b)** will receive  
40 a fee reduction; and

41 (4) designate a board or an official of the unit to conduct the  
42 hearing required by subsection ~~(c)~~; **(d).**

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1        ~~(c)~~ **(d)** A fee reduction authorized by this section must be approved  
 2        by a board or official of the unit at a public hearing.

3        SECTION 25. IC 36-7-4-1329 IS AMENDED TO READ AS  
 4        FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1329. (a) A unit  
 5        imposing an impact fee shall establish a fund to receive amounts  
 6        collected under this series.

7        (b) Money in a fund established under subsection (a) at the end of  
 8        the unit's fiscal year remains in the fund. Interest earned by the fund  
 9        shall be deposited in the fund.

10       (c) The fiscal officer of the unit shall manage the fund according to  
 11       the provisions of this series. The fiscal officer shall annually report to  
 12       the unit's plan commission **(or, in the case of a school corporation,**  
 13       **to any plan commission having jurisdiction in the territory of the**  
 14       **school corporation)** and to each infrastructure agency **(or governing**  
 15       **board, in the case of a school corporation)** responsible for  
 16       infrastructure in an impact zone. The report must include the following:

17       (1) The amount of money in accounts established for the impact  
 18       zone.

19       (2) The total receipts and disbursements of the accounts  
 20       established for the impact zone.

21       (d) A separate account shall be established in the fund for each  
 22       impact zone established by the unit and for each infrastructure type  
 23       within each zone. Interest earned by an account shall be deposited in  
 24       that account.

25       SECTION 26. IC 36-7-4-1330 IS AMENDED TO READ AS  
 26       FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1330. An impact fee  
 27       collected under this series shall be used for the following purposes:

28       (1) Providing funds to an infrastructure agency **or school**  
 29       **corporation** for the provision of new infrastructure that:

30       (A) is necessary to serve the new development in the impact  
 31       zone from which the fee was collected; and

32       (B) is identified in:

33       (i) the zone improvement plan **by the unit; or**

34       (ii) **the capital projects plan by the school corporation.**

35       (2) In an amount not to exceed five percent (5%) of the annual  
 36       collections of an impact fee, for expenses incurred by the unit **or**  
 37       **school corporation** that paid for the consulting services that were  
 38       used to establish the impact fee ordinance **or school impact fee**  
 39       **resolution.**

40       (3) Payment of a refund under section 1332 of this chapter.

41       (4) Payment of debt service on an obligation issued to provide  
 42       infrastructure described in subdivision (1).

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SECTION 27. IC 36-7-4-1331 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1331. (a) An infrastructure agency **or a school corporation** shall, within the time described in the zone improvement plan, construct infrastructure for which:

- (1) a zone improvement plan has been adopted;
- (2) an impact zone has been established; and
- (3) an impact fee has been collected.

(b) A unit may amend the unit's zone improvement plan, including the time provided in the plan for construction of infrastructure, only if the amount of expenditures provided for the construction of infrastructure in the original plan does not decrease in any year and the benefit to the overall impact zone does not decrease because of the amendment.

SECTION 28. IC 36-7-4-1332 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1332. (a) A fee payer is entitled to a refund of an impact fee if an infrastructure agency **or a school corporation**:

- (1) has failed to complete a part of the infrastructure for which the impact fee was imposed not later than:

(A) twenty-four (24) months after the time described in section 1331 of this chapter; or

(B) a longer time as is reasonably necessary to complete the infrastructure if unforeseeable and extraordinary circumstances that are not in whole or in part caused by the unit have delayed the construction;

- (2) has unreasonably denied the fee payer the use and benefit of the infrastructure during the useful life of the infrastructure; or

- (3) has failed within the earlier of:

(A) six (6) years after issuance of the structural building permit; or

(B) the anticipated infrastructure completion date as specified in the zone improvement plan existing on the date the impact fee was collected;

to make reasonable progress toward completion of the specific infrastructure for which the impact fee was imposed or thereafter fails to make reasonable progress toward completion.

(b) An application for a refund under subsection (a) must be filed with the unit that imposed the impact fee not later than two (2) years after the right to a refund accrues. A unit shall issue a refund in part or in full or shall reject the application for refund not later than thirty (30) days after receiving an application for a refund.

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(c) If a unit approves a refund in whole or in part, the unit shall pay the amount approved, plus interest from the date on which the impact fee was paid to the date the refund is issued. The interest rate shall be the same rate as the rate that the unit's impact fee ordinance **or school impact fee resolution** provides for impact fee payments paid in installments.

(d) If a unit rejects an application for refund or approves only a partial refund, the fee payer may appeal not later than sixty (60) days after the rejection or partial approval to the unit's impact fee review board established under section 1338 of this chapter by filing with the board an appeal on a form prescribed by the board. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(e) An impact fee ordinance **or a school impact fee resolution** shall designate the employee or official of the unit who is responsible for accepting, rejecting, and paying a refund and interest.

(f) A unit's impact fee review board shall hold a hearing on all appeals for a refund under this section. The hearing shall be held not later than forty-five (45) days after the application for appeal is filed with the board. A unit's impact fee review board shall provide notice of the application for refund to the infrastructure agency **or school corporation** responsible for the infrastructure for which the impact fee was imposed.

(g) An impact fee review board holding a hearing under subsection (f) shall determine the amount of a refund that shall be made to the fee payer from the account established for the infrastructure for which the fee was imposed. A refund ordered by the board must include interest from the date the impact fee was paid to the date the refund is issued at the same rate the ordinance **or school impact fee resolution** provides for impact fee payments paid in installments.

(h) A party aggrieved by a final decision of an impact fee review board in a hearing under subsection (f) may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo.

SECTION 29. IC 36-7-4-1334 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1334. An impact fee ordinance **or a school impact fee resolution** must set forth the reasons for which an appeal of the amount of an impact fee may be made. The impact fee ordinance **or school impact fee resolution** must provide that an appeal of the amount of an impact fee may be made for the following reasons:

(1) A fact assumption used in determining the amount of an

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1 impact fee is incorrect.

2 (2) The amount of the impact fee is greater than the amount  
3 allowed under sections 1320, 1321, and 1322 of this chapter.

4 SECTION 30. IC 36-7-4-1335 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1335. (a) As used in  
6 this section, "improvement" means an improvement under section  
7 1313(2) of this chapter or a site improvement, land, or real property  
8 interest as follows:

9 (1) That is to be used for:

10 (A) at least one (1) of the infrastructure purposes specified in  
11 section 1309 of this chapter, **in the case of an impact fee**  
12 **imposed by a unit other than a school corporation; or**

13 (B) **school buildings and facilities, in the case of an impact**  
14 **fee imposed by a school corporation.**

15 (2) That is included in or intended to be used relative to an  
16 infrastructure type for which the unit has imposed an impact fee  
17 in the impact zone.

18 (3) That is not a type of improvement that is uniformly required  
19 by law or rule for the type of development on which the impact  
20 fee has been imposed.

21 (4) That is or will be:

22 (A) public property; or

23 (B) furnished or constructed under requirements of the unit  
24 and is or will be available for use by other development in the  
25 area.

26 (5) That is beneficial to existing development and future  
27 development in the impact zone and is not beneficial to only one

28 (1) development.

29 (6) That either:

30 (A) allows the removal of a component of infrastructure  
31 planned for the impact zone;

32 (B) is a useful addition to the zone improvement plan; or

33 (C) is reasonably likely to be included in a future zone  
34 improvement plan for the impact zone.

35 (7) That is:

36 (A) constructed, furnished, or guaranteed by a bond or letter  
37 of credit under a request by an authorized official of the:

38 (i) applicable infrastructure agency; or

39 (ii) unit that imposed the impact fee; or

40 (B) required to be constructed or furnished under a written  
41 commitment that:

42 (i) is requested by an authorized official of the applicable

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1 infrastructure agency or the unit that imposed the impact  
2 fee;

3 (ii) concerns the use or developing of the development  
4 against which the impact fee is imposed; and

5 (iii) is made under section 613, 614, or 921 of this chapter.

6 (b) A fee payer is entitled to a credit against an impact fee if the  
7 owner or developer of the development constructs or provides:

8 (1) infrastructure that is an infrastructure type for which the unit  
9 imposed an impact fee in the impact zone; or

10 (2) an improvement.

11 (c) A fee payer is entitled to a credit under this section for  
12 infrastructure or an improvement that:

13 (1) is constructed or furnished relative to a development after  
14 January 1, 1989; and

15 (2) meets the requirements of this section.

16 (d) The amount of a credit allowed under this section shall be  
17 determined at the date the impact fee is assessed. However, if an  
18 assessment is not requested, the amount of the credit shall be  
19 determined at the time the structural building permit is issued. The  
20 amount of the credit shall be:

21 (1) determined by the:

22 (A) person constructing or providing the infrastructure or  
23 improvement; and

24 (B) applicable infrastructure agency; and

25 (2) equal to the sum of the following:

26 (A) The cost of constructing or providing the infrastructure or  
27 improvement.

28 (B) The fair market value of land, real property interests, and  
29 site improvements provided.

30 (e) The amount of a credit may be increased or decreased after the  
31 date the impact fee is assessed if, between the date the impact fee is  
32 assessed and the date the structural building permit is issued, there is  
33 a substantial and material change in the cost or value of the  
34 infrastructure or improvement that is constructed or furnished from the  
35 cost or value determined under subsection (d). However, at the time the  
36 amount of a credit is determined under subsection (d), the person  
37 providing the infrastructure or improvement and the applicable  
38 infrastructure agency may agree that the amount of the credit may not  
39 be changed. The person providing the infrastructure or improvement  
40 may waive the person's right to a credit under this section.

41 SECTION 31. IC 36-7-4-1337 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1337. An impact fee

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ordinance **or a school impact fee resolution** shall do the following:

(1) Establish a method for reasonably allocating credits to fee payers in situations in which the person providing infrastructure or an improvement is not the fee payer.

(2) Allow the person providing infrastructure or an improvement to designate in writing a reasonable and administratively feasible method of allocating credits to future fee payers.

SECTION 32. IC 36-7-4-1338 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1338. (a) Each unit that adopts an impact fee ordinance **or a school impact fee resolution** shall establish an impact fee review board consisting of three (3) citizen members appointed by the executive of the unit **or, in the case of a school corporation, the governing body**. A member of the board may not be a member of the plan commission. An impact fee ordinance **or a school impact fee resolution** must do the following:

(1) Set the terms the members shall serve on the board.

(2) Establish a procedure through which the unit's executive **or, in the case of a school corporation, the governing body** shall appoint a temporary replacement member meeting the qualifications of the member being replaced in the case of conflict of interest.

(b) An impact fee review board must consist of the following members:

(1) One (1) member who is a real estate broker licensed in Indiana.

(2) One (1) member who is an engineer licensed in Indiana.

(3) One (1) member who is a certified public accountant.

(c) An impact fee review board shall review the amount of an impact fee assessed, the amount of a refund, and the amount of a credit using the following procedures:

(1) The board shall fix a reasonable time for the hearing of appeals.

(2) At a hearing, each party may appear and present evidence in person, by agent, or by attorney.

(3) A person may not communicate with a member of the board before the hearing with intent to influence the member's action on a matter pending before the board.

(4) The board may reverse, affirm, modify, or otherwise establish the amount of an impact fee, a credit, a refund, or any combination of fees, credits, or refunds. For purposes of this subdivision, the board has all the powers of the official of the unit from which the appeal is taken.

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(5) The board shall decide a matter that the board is required to hear:

(A) at the hearing at which the matter is first presented; or

(B) at the conclusion of the hearing on the matter, if the matter is continued.

(6) Within five (5) days after making a decision, the board shall provide a copy of the decision to the unit and the fee payer involved in the appeal.

(7) The board shall make written findings of fact to support the board's decision.

SECTION 33. IC 36-7-4-1339 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1339. (a) This section applies to a person having an interest in real property that may be subject to an impact fee ordinance **or a school impact fee resolution** if the development occurs on the property.

(b) A person may seek to:

(1) have a court determine under IC 34-26-1 any question of construction or validity arising under the impact fee ordinance **or school impact fee resolution**; and

(2) obtain a declaration of rights, status, or other legal relations under the ordinance **or resolution**.

(c) The validity of an impact fee ordinance adopted by a unit or the validity of the application of the ordinance in a specific impact zone may be challenged under this section on any of the following grounds:

(1) The unit has not provided for a zone improvement plan in the unit's comprehensive plan.

(2) The unit did not prepare or substantially update the unit's zone improvement plan in the year preceding the adoption of the impact fee ordinance.

(3) The unit has not identified the revenue sources the unit intends to use to implement the zone improvement plan, if identification of the revenue sources is required under section ~~1318(c)~~ **1318(d)** of this chapter.

(4) The unit has not complied with the requirements of section ~~1318(f)~~ **1318(g)** of this chapter.

(5) The unit has not made adequate revenue available to complete infrastructure improvements identified in the unit's zone improvement plan.

(6) The impact fee ordinance imposes fees on new development that will not create a need for additional infrastructure.

(7) The impact fee ordinance imposes on new development fees that are excessive in relation to the infrastructure needs created by

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the new development.

(8) The impact fee ordinance does not allow for reasonable credits to fee payers.

(9) The unit imposed a prohibition or delay on new development to enable the unit to complete the adoption of an impact fee ordinance.

(10) The unit otherwise fails to comply with this series in the adoption of an impact fee ordinance.

**(d) The validity of a school impact fee resolution or the validity of the application of the resolution may be challenged under section 1339.5 of this chapter.**

SECTION 34. IC 36-7-4-1339.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1339.5. (a) This section applies to a school impact fee resolution or a school impact fee adopted or imposed by a school corporation.**

**(b) The validity of a school impact fee resolution adopted by the governing body of a school corporation or the validity of the application of the school impact fee may be challenged under this section on any of the following grounds:**

**(1) The school corporation has not adopted a capital projects plan that meets the requirements of IC 20-46-6 and section 1313.6 of this chapter.**

**(2) The school corporation did not prepare or substantially update the school corporation's capital projects plan in the year preceding the adoption of the school impact fee resolution.**

**(3) The school impact fee resolution imposes on new residential development fees that are excessive in relation to the infrastructure needs created by the new residential development.**

**(4) The school impact fee resolution does not allow for reasonable credits to fee payers.**

**(5) The school corporation otherwise fails to comply with this series in the adoption of the school impact fee resolution.**

SECTION 35. IC 36-7-4-1340 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1340. (a) An impact fee ordinance or a school impact fee resolution may take effect not earlier than six (6) months after the date on which the:**

**(1) impact fee ordinance is adopted by a legislative body; or**

**(2) school impact fee resolution is adopted by a governing body.**

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1 (b) An impact fee may not be collected under an impact fee  
2 ordinance **or a school impact fee resolution** more than five (5) years  
3 after the effective date of the ordinance **or resolution**. However, a unit  
4 may adopt a replacement impact fee ordinance **or replacement school**  
5 **impact fee resolution** if the replacement impact fee ordinance **or**  
6 **replacement school impact fee resolution** complies with the  
7 provisions of this series.

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